

# Paid Family and Medical Leave

HOW MANY PEOPLE can afford to take time off from work without being paid? Not many. When a worker gets sick or a child or parent gets sick; when a woman is giving birth or when a parent needs to go to a conference with a teacher, leaving work can not only cost a day's pay, but it can cost advancement in a career. Women, who do most of caregiving, are particularly disadvantaged.

There is intense interest in paid family and medical leave. Activists have been working for years to get it in their states, cities, and nation. A Google search of "Paid Family Leave" on March 3, 2009 showed 16,400,000 entries. The need is great.

Activists won a partial national victory in 1993 with the passage of the Family and Medical Leave Act (FMLA). The precursor of the FMLA, the Alternative Work Schedules Act (AWSA)\* was originally intended as an energy conservation measure to decrease the traffic and the gasoline used in downtown Washington, D.C., but the efforts of advocates turned it into a family-friendly act.[1] The act won the support of conservationists as well as work-life advocates.[2]

The FMLA provides 12 weeks of unpaid leave for workers in companies that employ at least 50 employees. The leave is for the birth and care of a newborn child, for placement of a child for adoption or foster care, to care for an immediate family member with a serious health condition, or to take medical leave. In 2008, Congress amended it as the National Defense Authorization Act to permit a spouse, son, daughter, parent, or next of kin to take up to 26 workweeks of leave to care for a member of the Armed Forces who is undergoing medical treatment, recuperation, or therapy.[3] Importantly, however, the FMLA does not provide paid leave.

Activists have succeeded in getting paid family leave legislation in only three states: California, Washington, and New Jersey. They have fought to get it in many other states.[4] In addition, three cities have passed paid sick days legislation (San Francisco, Washington, DC, and Milwaukee).[5]

Five states (California, Hawaii, New Jersey, New York, and Rhode Island) and Puerto Rico use their mandatory Temporary Disability Insurance (TDI) programs to provide paid sick leave for own health illnesses. In addition to the already established leave for one's own disability (including up to ten weeks of maternity disability), California and New Jersey have added programs that provide covered employees up to six weeks a year of paid leave to care for a seriously ill child, spouse, parent, domestic partner, or a new child.[6]

The federal Family and Medical Leave Act was an important first step, but is only a partial remedy to a larger problem of managing family and medical leaves that workers face. A Department of Labor study in 2000 found that 38 percent of workers are not eligible under the provisions of the FMLA due to their employer size or their recent work history.[7] In addition, some workers who need leave to take care of family members are excluded because they are not a spouse, child, or parent of the person who needs their care. And millions of U.S. workers are excluded from coverage because they cannot afford unpaid leave. A study of paid leave by Robert Drago showed that "welfare policies, and particularly work requirements under TANF, are serving to reduce parental time investments in childcare for infants, and doing so for groups that have few resources and have historically experienced discrimination in the workplace and community." [8] Expansion of paid leave "would disproportionately help the working poor, women with lower levels of education and lower status jobs, and women of color." [9]

*Single mothers may not be able to afford to use either paid*

*leave or reduced hours options if they involve even a minimal loss of income or, worse still, the loss of health insurance coverage. The resources provided to single mothers need to be enhanced if we desire an equitable distribution of policy utilization.[10]*

The benefits to employees of paid medical and family leave are obvious. At some point in all of our work lives, we need to take time off from work because of our own illness or the need to care for family members, including newborns. Being paid for that time off eases our anxieties and improves both our psychological and physical health. The benefits to family members are also obvious. In 1997, American pediatricians recommended that new mothers breast-feed for a full year. Ann Crittenden commented on this:

*This was a sick joke in a country that entitles new mothers to no paid leave at all. American mothers are guaranteed only three months' maternity leave without pay – forcing most working mothers to return to their jobs within a few weeks after giving birth, because they can't afford to take three months off without a pay check. As a consequence, poor mothers are far less likely to breast-feed than their better-off sisters, and infants as young as six weeks are going into day care, with some spending as many as ten hours a day in group settings.[11]*

Crittenden recommends that mothers be granted at least one year of paid leave so they can breast-feed at home. Some people argue that working mothers who breast-feed don't need to stay home; they can use a breast pump when at work to save the milk for the infant. Many women do this, but they often have a problem with employers who don't want them to take time off from work, or don't provide a private space for them to use the breast pump.

**Comparing the U.S. to other countries**

THE UNITED STATES IS ONE OF VERY FEW industrialized countries that do not have some form of universal, mandatory sick leave and paid maternity leave. Among 21 high-income economies, only Australia and the United States do not have legislative requirements to provide paid maternity leave and only the United States does not have paid time off for extended own-health leaves.[12] Half of the other of these 21 countries offer paid paternity and/or sex-neutral parental leave as well.[13] Several nations have implemented "right to request" policies. These permit employees to ask for flexible work arrangements or reduced hours employment. Twelve of the European Union nations provide for part-time employment upon return from parental leave, and those policies are limited to caregivers.[14]

Sweden guarantees 11 months of generous paid maternity leave, followed by the statutory right to work no more than 30 hours per week until the child turns eight. Each local district has a list of child care crèches that provide family care for children under 2, and federal housing assistance increases after the baby is born.[15]

Programs for paid leave in Europe are financed by social insurance, usually payroll taxes paid for by some combination of employee and employer contributions. "They are then pooled across enterprises, industries, and generations and between men and women, so when a worker goes out on leave, the bill isn't footed by the employer other than through a diffused tax burden." [16] Some discussions of paid leave in the United States have proposed that the employer pay the full cost. Janet Gornick says, "I think that would be catastrophic; employers would protest, and rightly so, and their incentive to discriminate against young women would be quite intense." [17]

In their study of parental leave policies in 21 countries, Janet Gornick and Rebecca Ray noted five best practices:

1. First, the most important element is that the leave needs to be paid, and at a generous rate.
2. Second, men and women need to have their own, nontransferable entitlements.
3. The coverage and eligibility should be broad.
4. Collective financing is crucial because it reduces the financial burden on individual employers which, in turn, reduces political opposition to these programs as well as the incentive to discriminate against young women.
5. The best-practice cases enabled parents to flexibly draw the benefits to which they are entitled. This flexibility in terms of timing is important, but no one argues that workers should have unlimited flexibility. Employers do need a reasonable notification period before employees take leave and, ideally, before they return. That's fair.[18]

### **Employer benefits**

SOME EMPLOYERS PROVIDE WORKERS WITH paid leave for family or medical reasons through benefits such as sick leave, vacation time, parental leave, or medical leave, but they are not legally required to do so.[19] Just over one-third of all those who took any type of family or medical leave received no pay.[20] Fewer than half of all employed women received any paid leave during the first 12 weeks of their children's lives and only 7 percent of employers offered any paid paternity leave.[21]

A national study of employers showed that 79 percent of employers say that they provide paid or unpaid time off for employees to provide elder care without jeopardizing their jobs.[22] Only 6 percent provide direct financial support for local elder care programs.

In general, there has been only a modest increase for employer support for family care assistance or flexible workplace policies over the last several years. "Small increases in policy adoption are being seen in the

availability of elder care, adoption assistance, and access to long-term care insurance, which are now available to about 1 in 10 workers." [23]

There are gaps in the implementation of FMLA. The National Study of Employers survey found that about a quarter of organizations offer less than 12 weeks of unpaid leave for maternity leave, paternity leave, adoption or foster care leave, and to care for a child with a serious illness. [24] Thirty percent of organizations that fall under the FMLA do not offer the federally mandated 12 weeks of leave, [25] and they are breaking the law. Another problem with FMLA is the lack of education for employees regarding their rights. Many employees did not know how the FMLA applied to their situation. [26]

The limitations of our current voluntary income replacement programs are increasingly apparent. Typically, few if any family members are available to provide unlimited free care. Ironically, paid health providers want to keep patients in care facilities for less time than they did when unpaid care was more plentiful, requiring families to find and/or provide alternative care. Paid family and medical leave is a step toward acknowledging the way our families work. [27] The vast majority of U.S. workers (85 percent) lack access to any formal paid work-family policies. [28] We have a long way to go.

### **Benefits and costs to employees and employers**

NUMEROUS STUDIES DOCUMENT THE BENEFITS of paid family and medical leave to employees and to society: Employees who have paid family and medical leave are more likely to return to work and stay longer in jobs. [29] Even unpaid leave has a large positive effect on the psychological well being of employees with elder care needs. [30] Countries with longer parental leave have a more egalitarian gender division of housework, [31] and lower wage gaps between women and men. [32]

Research bears out that full recovery from childbirth typically takes six months or longer.[33] Longer leaves improve the quality of mother-infant interactions and reduce marital instability.[34] Children whose mothers returned to work early (less than nine months after childbirth) scored less on child-cognitive scores than other children, even after adjusting for home environment.[35] One study found a detrimental impact on children's cognitive development when mothers are employed in the first 12 weeks of a child's life, only somewhat mitigated by the increased income associated with employment.[36] Being able to take time to deal appropriately with one's own health problems or the illness of a child, spouse, or parent is likely to speed recovery and reduce the need for relying on government-provided caregiving or health care. A study of 16 European countries over the years 1969 to 1994 found that more generous paid leaves reduced deaths among infants and young children.[37]

The internet advocacy organization Moms Rising speaks to the anti-poverty effects of paid family and medical leave:

*Having a baby is a leading cause of "poverty spells" in this country (times when income dips below what's needed for basic living expenses like food and rent). Paid Family Leave helps families bridge the income gap caused by folks being unable to go to work because they have to care for a new baby or a sick parent or spouse. In fact, nearly half of working people report that an illness or injury in their family caused them to get behind on their bills, including mortgage payments. We need Paid Family Leave to help families stay out of poverty – especially in this time when so many families are already vulnerable.[38]*

Employers resist mandatory family and medical leave, both paid and unpaid. Yet they overestimate the costs and underestimate, or refuse to consider, the benefits. When paid family and medical leave legislation was introduced in the

Massachusetts legislature in 2006, Randy Albelda and Alan Clayton-Matthews, economists at the University of Massachusetts Boston, studied the costs and benefits of the plan. Using a simulation model, they estimated the current employer and employee wage costs when employees take paid and unpaid family and medical leaves, and the new and redistributed wage-replacement costs of the proposed program. They estimated the current situation in Massachusetts as follows:

- There are already significant costs borne by employers and employees of family and medical leave taking. In Massachusetts, just under 357,000 of 3.2 million employees take 442,570 leaves (some workers take more than one leave annually) and forego \$1.36 billion in annual wages. Employers provide \$372 million in wage replacement for a total wage cost of \$1.73 billion. The average cost to the worker who takes a leave is just over \$3,000 annually while the average cost to his or her employer is close to \$1,300.
- Fifty percent of current leaves in Massachusetts are for own-health reasons, 22 percent are for prenatal leave (including maternity disability) and 23 percent of leaves are for tending to an ill relative.
- The average length of leave for all leaves is 5.4 weeks.
- Currently 33.8 percent of all family and medical leaves are without any wage replacement.

When Albelda and Clayton-Matthews applied their simulation model to the proposed paid family and medical leave program that allowed for 12 weeks of paid leave, replacing all of weekly earnings up to \$750/week, they estimated:

1. The total number of family and medical leaves taken increases by just under 25,400 to a total of 467,962, a 5.7 increase. The total number of leaves using the proposed program will be 183,981 (assuming two-thirds of all eligible workers taking leave actually use it).



2. The total cost of the proposed program is \$389 million. Averaged across all employees, the annual cost is \$120 per worker and the weekly cost is \$2.31.
3. Total costs of leaves (including lost wages, employer benefits, and the program costs) rise to \$1.84 billion, an increase of 6.4 percent over current costs. The amount of employer wages foregone and employer benefits paid decrease with the proposed program. The new program results in some costs being shifted from employers to employees, and from individual workers taking leave to all workers.
4. The average length of leave increases by one-half day from 5.4 weeks (based on a five-day week) to 5.5 weeks.
5. The percentage of leaves with no wage replacement decreases to 24.0 percent.
6. While the percentage of all leaves without pay decreases for all workers, the proposed program will disproportionately decrease the percentage without pay for leaves taken by workers in low-income households, non-white, younger, and less educated, helping to level a very unlevel employment playing field.

These estimates refute the arguments that paid leave programs are too costly. The estimates should also dispel fears about lengthy extensions of leave-taking due to a paid leave program. Indeed, there are important gains for employees and employers with paid family and medical leave. As a social insurance program, paid leave provides all covered workers the right to receive wage replacement for a limited amount of time when they need it at a relatively small annual price to individual workers. Employers will benefit by reduced use of employer-paid time off and reduced turnover. Furthermore, a universal paid leave program will provide some workers who currently do not have paid leave – typically those with the lowest wages – some form of wage replacement.[39]

Albelda and Clayton-Matthews point out that paid job-

protected leave might encourage workers to return to their jobs once the need for leave is over, instead of leaving the labor force altogether or finding work in a new workplace – just as the FMLA reinforces workers' job attachment now. This could have several effects:

- Returning to work reduces turnover, lowering employer costs – both the direct costs of advertising, interviewing, orientation, training, and processing (of both the exiting and the in-coming employee) and indirect costs associated with losing employees who understand internal networks, specific customers, or co-workers' abilities, and decreased morale or efficiency associated with working with inexperienced new employees.
- Workers who stay with their employers might see improved future earnings, since quitting a job can decrease workers' future earnings potential. In addition, workers will benefit from the continuation of any employer benefits offered.
- There might be government savings as well, since workers who quit instead of returning may need to rely on government support (like Unemployment Insurance, TANF, or Medicaid) for longer than if they had retained their job because of using a paid leave program.

Because the plan would be financed by employee payroll deductions, "a paid leave program – beyond administrative costs – will only marginally increase the current cost of leave taking. With an employee-based plan the largest share of the cost of leave taking will be borne by the workers who take those leaves; however, a portion of those costs will be shifted onto workers not taking leave." [40]

### **Employer opposition to FMLA**

EMPLOYERS AND EMPLOYEES HAVE FOUGHT each other over FMLA since it began. Some employers have a "give-them-an-inch-and-they'll-

take-a-mile" attitude about workers' use of the benefit. Companies accuse workers of using the Act to take time off for vague and chronic maladies and are doing so intermittently, which makes scheduling harder. Some workers contend that companies are making it more difficult to qualify for leave, and are requiring second or third opinions from doctors.[41]

Companies have spied on workers whom they suspect of fraudulent claims. The 7th U.S. Circuit Court of Appeals in Chicago has twice sided with employers who used surveillance to observe employees suspected of abusing the Family and Medical Leave Act. On July 21, 2008, they handed down a decision on the case of Diana L. Vail, who worked a night shift at the Raybestos Products Co., a car parts manufacturer in Crawfordsville, Ind. She was approved for 33 days of intermittent medical leave from May through September 2005 because of migraines. As the summer progressed, Ms. Vail's use of her leave became more frequent. Her supervisors became suspicious because they knew her husband had a lawn mowing business and that she would help him. Raybestos hired an off-duty police sergeant to investigate. Ms. Vail took medical leave for her Oct. 6, 2005 evening shift, and the next morning was observed mowing a lawn. She was terminated, and then filed suit, claiming, in part, that the termination violated FMLA. A lower court dismissed her case and a three-judge panel reviewing the case said that "the information gleaned from the reconnaissance was sufficient to give Raybestos an 'honest suspicion' that Ms. Vail was not using her leave for its intended purpose. While conducting surveillance of an employee 'may not be preferred employer behavior, employers have certainly gone further' and hired investigators to videotape employees on FMLA leave, the appeals court said in its ruling." [42]

The second case before the Chicago appeals court was Harold Crouch vs. Whirlpool Corp. Mr. Crouch had been working at Whirlpool in Benton Harbor, Mich., since 2000, while his

fiancée had been there since 1969. The couple attempted to coordinate their vacation times, which are based on seniority. While his fiancée received all of her requested vacation time, Mr. Crouch was denied most of his. In both 2002 and 2003, he filed for disability leave for the same periods for which he had unsuccessfully sought vacation time, both times claiming a knee injured during yard work. A supervisor noticed this and the company hired a private investigator, who videotaped Mr. Crouch doing yard work during the period he was out on disability. Mr. Crouch was terminated and sued, claiming violation of the FMLA. "Whirlpool's honest suspicion forecloses Crouch's FMLA claim," said the three-judge panel, which upheld a lower court ruling dismissing the case.[43]

According to a *Business Insurance* article, businesses have become emboldened by these court suits and "a growing number of employers are turning to surveillance to catch employees suspected of abusing the Family Medical Leave Act." [44] However, lawyers warn employers to respect privacy concerns and not become "overzealous and overreaching in their invasion of an employee's privacy." [45] The FMLA regulations contain a prohibition against using aggressive surveillance or treating an employee on FMLA differently than other employees. The lawyer who successfully represented the employer in the Vail case, Matthew S. Effland, advised employers to hire trained private investigators or off-duty police officers rather than sending out someone from the security department with a video camera. [46] Carl C. Bosland, managing director of the Denver-based Bosland Consulting Group, advised employers to be cautious about interpreting the results of surveillance. He said employees are eligible for FMLA leave if they are unable to perform a particular essential job function. This means they may still meet FMLA's technical requirement even if they are seen engaging in activities that make it "look like they're just malingering." [47]

A coalition of business groups lobbied to tighten the

regulations. A spokesman for the National Association of Manufacturers said, "Our employers don't have any problem with employees using the leave for something like chemotherapy treatment or a pregnancy, but you can get it for a cold or migraine headaches. And that causes enormous scheduling and productivity problems." [48] In support of their campaign to tighten regulations as proposed by the Labor Department in February 2008, employers claimed that employees as well as employers thought the FMLA was being misused. A group called the National Coalition to Protect Family Leave, which included the U.S. Chamber of Commerce and National Retail Federation, conducted a national telephone survey of 1,000 registered voters, which said that more than 60 percent of Americans thought the FMLA needed tightening to eliminate misuse. Some of the questions in the survey gave a worst-case scenario that was aimed at alarming people, such as: "vulnerable citizens, such as children waiting for a school bus or people in need of emergency 9-1-1 services, are left to themselves." [49] Lisa Horn, a representative of the coalition, said that the potential for FMLA misuse is widely seen by Americans, particularly when it comes to sporadic, unscheduled leave. For example, she said, one in three workers say they can't get their job done when a co-worker takes unscheduled leave. [50]

Debra Ness, president of the National Partnership for Women & Families, opposed the Labor Department's proposal to tighten regulations. She said, "For 15 years, the FMLA has worked well. Now, with the economy in trouble and families struggling, workers need its protection more than ever." [51]

The Bush administration had issued regulations that watered down the FMLA just before President-elect Barack Obama was sworn in. In November 2008, the Department of Labor issued the new rules, which took effect January 16, 2009. The new rules allow employers to demand recertification of a medical condition every 30 days. If the employer has reason to doubt an employee's need for leave, the rules would require the

employee to get a second opinion.[52] A Human Resources department can directly contact an employee's health care provider. Employees taking leave must tell their supervisors the same day or the following day. Previously, notice could be delayed. Employers can deny "perfect attendance" awards to workers on FMLA leave and don't have to grant it in increments smaller than they allow other leave. Under the new rules, the time an employee spends in "light duty" work doesn't count against FMLA. Also, a company must explain in writing why it is denying leave. While they won some victories, employers didn't get everything they wanted, because the changes did not define "serious health condition," or iron out problems with intermittent leave.

Sharyn Tejani, senior policy counsel at the National Partnership for Women and Families, criticized the Department of Labor for not doing an empirical FMLA study, rather than just asking for comments. "You shouldn't change regulations for the entire country based on employer complaints," she said.[53] A Congressional advocate of FMLA, Rep. Carolyn Maloney, D-New York, wrote a letter to Obama's chief of staff Rahm Emanuel requesting "that the president-elect's transition team take a close look at how we may expeditiously redress any new regulations that undermine access to FMLA leave." [54]

Employees worry about increasing employer scrutiny of their use of FMLA. They are concerned that the direct contact with medical providers would violate medical privacy. One employee asked the advice of Lily Garcia, who writes a column about employment law for the *Washington Post*.

*I have been certified for Family and Medical Leave Act time off for an ongoing problem that requires frequent tests and treatments (leaving an hour early twice a month, on average). My supervisor is not happy about this and is requiring me to submit proof that I attended the appointment and that I had the appointment. When I talk to the human resources department about this, they don't understand where she is*

*coming from, but they are also not willing to get in the middle of it because it's a doable request. It is doable, but I am feeling harassed. Should I just be grateful that I have FMLA and jump through these hoops, or should I start tracking this as a hostile work environment? It feels hostile.[55]*

Garcia advised her that if her employer has reasons to doubt her need for leave, the law could require her to obtain a second medical opinion. "What your employer may not do is administer the FMLA in such a way that it amounts to retaliation against those who take advantage of the law." [56] Since the employer's request was doable, she advised the woman to comply with it but to keep good notes of her employment relationship for possible future use.

### **The road ahead**

THE OPPOSITION AGAINST PAID FAMILY AND MEDICAL LEAVE IS STRONG. Business lobbies are well organized and have lots of money. The Bush Administration was strongly allied with business interests. During the presidential campaign, Democratic candidates indicated support for family leave. Barack Obama proposed expanding the 1993 family leave law to include businesses with fewer than 25 workers. He also proposed to give states \$1.5 billion in incentives to start paid family leave programs, [57] and he supported a federal guarantee of sick leave, saying he would "require that employers provide seven paid sick days per year." [58] Michelle Obama has said that she is concerned about the problems of juggling work and family life.

In 2009, a bill was proposed in the U.S. House to grant Paid Family Leave for all federal workers, sponsored by Rep. Carolyn Maloney. The internet advocacy group Moms Rising was working hard for its passage. They argued that

*Policies for Federal employees can lead the nation! With more than 2.7 million civilian employees, the federal government*

*is the nation's largest employer. Passing a standard of Paid Parental Leave for people who work for the nation's largest employer is a benchmark toward Paid Family Leave for all workers. It's time for the federal government to establish policies which support working families, and thus set an example for all other employers.[59]*

This bill was passed by the House on June 4, 2009 and awaited action by the Senate. Republicans opposed it. Republican Pete Sessions of Texas said, "Maybe we just ought to let federal employees take 16 years off. Hello! Hello! Wake up, Washington! We're in a recession, and somebody is going to have to pay for this." [60]

In March 2009, the Family Leave Insurance Act of 2009 was introduced in the House, co-sponsored by Representatives Pete Stark (D-CA), Lynn Woolsey (D-CA), and Carolyn Maloney (D-NY). It would provide 12 weeks of paid benefits to workers who need to take time off to care to care for an ill family member, a new child, or because of their own illness. It would work like Unemployment Insurance, and would be funded by individuals and their employers paying 0.2 percent of employee's wages into an insurance fund. It would include employers who have two or more employees for 20 or more weeks during the year. Rep. Stark, Chair of the House Ways and Means Health Committee, said

*If we want to help people through the recession, we need to make sure that workers can maintain their incomes without sacrificing their families' needs. The Family Leave Insurance Act will provide paid family leave for workers, which will mean healthier children, stronger families, and more competitive businesses.[61]*

Rep. Stark expected to have a fight on his hands. He said, "Employers didn't step up on Medicare or Social Security. We made them do it and now it's part of the



system." [62] Moms Rising is urging people to work for the federal Family Leave Insurance Act.

A Congressional act to provide sick leave to employees, called the Healthy Families Act, was introduced in May 2009 by Senator Kennedy, in the Senate, and Rosa DeLauro, in the House. [63] It would require employers of 15 or more employees to provide up to seven job-protected sick days each year.

As usual, business groups mobilized to block the legislation. Some employers cynically referred to HFA as the Paid Vacation Act because a doctor's certificate isn't required unless the employee is out for three or more consecutive days.

There is also a campaign to get more flexibility in work hours, in order to accommodate caregiving responsibilities. In 2007, the Working Families Flexibility Act was introduced in both the Senate and the House of Representatives. This act allows an employee who works for an employer with at least 15 employees to request a change in his or her scheduling, place of work, or number of hours worked. The employer is permitted to refuse the request as long as it provides a reason for doing so – such as a loss of productivity or the effect of the change on the employer's ability to meet customer demand. [64]

Most countries with paid leave policies finance them through payroll taxes, although Canada uses its unemployment insurance system. A federal paid leave program could adopt similar mechanisms. For example, Heather Boushey from the Center for American Progress recently proposed a plan for paid family and medical leave through the already existing Social Security program, which is funded by payroll taxes. [65] It could be funded either by adding a small increase to the payroll tax (about three-tenths of a percent), lifting the earning cap beyond its 2009 level of \$106,800, or by allowing workers to trade future Social Security benefits for paid time to provide care during their working years. The bureaucracy to

finance the system and to deliver checks (although they would have to be sent out quicker than the system currently functions) is already in place and Social Security already provides benefits to workers who become disabled and a worker's surviving family members. There is already a structure in place to establish the criteria for eligibility that takes into account a variety of circumstances.[66]

Boushey believes that this is a good time to push for this plan, suggesting that "we leverage populist outrage over Wall Street bailouts to overcome past hurdles to secure family leave insurance for all workers, including low-wage workers. When corporate executives with tin ears whine about cuts to their multimillion-dollar pay packages amid a deep recession, now is the time for progressives to focus on inclusive labor-market solutions for all American families." [67]

Federal legislation that establishes uniform policies for all the states is the best possible outcome. It is unfortunate that Obama's proposal would leave it up to the states, rather than enacting a uniform federal provisions. Even though activists have had notable success in winning and proposing state legislation, many states have no policy at all and those that do vary in their coverage.

Part-time workers are generally not covered by paid family and medical leave. For many of them, welfare also serves as family leave. Ellen Bravo, coordinator of the Multi-State Working Families Consortium, recommended that, in addition to using stimulus funds to expand Unemployment Insurance, Congress should use stimulus funds to help states set up Family Leave insurance funds for part-time as well as full-time workers.[68]

The swine flu (H1N1) virus highlighted the dilemma of parents across the nation who found themselves in a bind when hundreds of schools closed. Nearly half of all workers – 59 million people – and 86 percent of food service workers do not

have the right to paid sick days. President Obama was slow to acknowledge the problem, and only requested that parents and businesses think about "contingency plans" if kids get sick and must stay home. He urged employers to "allow infected employees to take as many sick days as necessary." Yet there is no penalty for employers who choose not to pay workers in this situation, or for those who refuse workers any time off at all.

The times seem ripe for expansion of paid family and medical leave. Middle-class people are affected by it as well as poor people, which gives it more political clout. Unions have crafted strategic plans to fight for legislation. Many academics are doing research and publicizing it. Many advocacy organizations are fighting for it. Moms Rising is using the internet creatively to organize. Public awareness is high. Activists have formed strong coalitions in their states and nationally. Activists need to just keep on keepin' on, in their long march for good federal legislation.

## Footnotes

\* Formally known as the Federal Employees Flexible and Compressed Work Schedules Act of 1982. The act does not require agencies to use the recommendations, but in 1994 President Clinton recommended each executive department and agency to establish procedures that encourage the expansion of family-friendly work arrangements.

1. Janet M. Liechty and Elaine A. Anderson, "Flexible workplace policies: Lessons from the Federal Alternative Work Schedules Act," *Family Relations*, 2007, 56:304-17.

2. Ellen Ernst Kossek and Brian Distelberg, "Work and family employment policy for a transformed labor force," in Ann C. Crouter and Alan Booth, *Work-Life Policies*. (Washington, DC: The Urban institute Press, 2009), p. 22.

3. U. S. Department of Labor, [Family and Medical Leave Act](#). [updated link added Mar. 11, 2016.]
4. In 2009, paid sick days legislation had been proposed in thirteen states – Arkansas, California, Connecticut, Illinois, Massachusetts, Maine, Minnesota, North Carolina, Ohio, Pennsylvania, Tennessee, Vermont, and West Virginia.. Paid family leave legislation was proposed in six states – Arizona, Massachusetts, Minnesota, New Jersey, New York, and Pennsylvania.
5. Julia Weber, "[Policy Mini-brief Series](#)," Alfred Sloan Foundation, Boston College, 2009.
6. Randy Albelda and Alan Clayton-Matthews, "Sharing the costs, reaping the benefits: Paid Family and Medical Leave in Massachusetts," Labor Resource Center, U. Mass Boston, June 2006; and [New Jersey Department of Labor and Workforce Development](#), March 30, 2009.
7. David Cantor, Jane Waldfogel, Jeffrey Kerwin, Mareena McKinley Wright, Kerry Levis, John Rauch, Tracey Hagerty and Martha Stapleton Kudela. *Balancing the needs of families and employers: Family and Medical Leave surveys*. (Washington, DC: U.S. Department of Labor <http://www.dol.gov/asp/fmla/main2000.htm>), January 20, 2001.
8. Robert Drago, "What would they do? Childcare under parental leave and reduced hours options." (University Park, PA: Penn State Population Research Institute), April 2009, p. 21.
9. *Ibid.*, p. 22.
10. *Ibid.*, p. 23.
11. Ann Crittenden, *The Price of Motherhood*. (New York: Henry Holt & Co.), 2001, pp. 258-259.
12. Rebecca Ray, Janet C. Gornick and John Schmitt, *Parental Leave Policies in 21 Countries: Assessing Generosity and*

*Gender Equality*, (Washington, DC: Center for Economic and Policy Research), September 2008 and Jody Heymann, Hye Jin Rho, John Schmitt, and Alison Earle, *Contagion Nation: A Comparison of Paid Sick Day Policies in 22 Countries*, Washington DC: Center for Economic and Policy Research, May 2009.

13. Ray, Gornick and Schmitt.

14. Robert Drago, p. 2.

15. Jennifer Glass, "Work-Life Policies," in Ann C. Crouter and Alan Booth, *Work-Life Policies*. (Washington, DC: The Urban institute Press), 2009, p. 232.

16. Judi Casey and Karen Corday, "Parental leave policies in 21 countries: Assessing generosity and gender equality," An [interview](#) with Janet C. Gornick and Rebecca Ray, *The Network News*, Vol. 11(3), March 2009.

17. *Ibid.*

18. *Ibid.*

19. Albelda and Clayton-Matthews, p. v.

20. U.S. Department of Labor, *Balancing the Needs of Families and Employees: FMLA Survey Report*, Washington, D.C.: U.S. Department of Labor, 2000, Table A1-4.4.

21. U.S. Office of Personnel Management, "[Paid parental leave](#)," 2001.

22. James T. Bond, Erin Brownfield, Ellen Galinsky, and Stacy S. Kim, "[The National Study of Employers](#)," 2005.

23. Kossek and Distelberg, p. 34.

24. The exact percentages are: 22 percent for maternity leave; 29 percent for paternity leave; 22 percent for adoption or foster care leave; and 21 percent to care for a child with a

serious illness.

25. Bond, et. al., p. 25.

26. U.S. Department of Labor, [Family and Medical Leave Act Regulations](#): *A report on the Department of Labor's Request for information – 2007 Update* (Washington, DC: U.S. Department of Labor), 2007.

27. Albelda and Clayton-Matthews, p. 3.

28. Kossek and Distelberg, p. 14.

29. Sunhwa Lee, "Women's work supports, job retention and job mobility: Child care and employer provided health insurance help women stay on jobs." Washington, DC: Institute for Women's Policy Research, 2004; Colleen Henry, Misha Werschkul, and Minita Rao, "Child care subsidies promote mothers' employment and children's development." Washington DC: Institute for Women's Policy Research, 2003.

30. Elisa K. Pavalka and Karhryn A. Henderson, "Combining care work and paid work: Do workplace policies make a difference?" *Research on aging* 28: 359-79, 2006.

31. Makiko Fuwa and Philip N. Cohen, "Housework and social policy," *Social Science Research* 36 (2): 512-30, 2007.

32. Jane Waldfogel, "Understanding the 'Family Gap' in pay for women with children," *Journal of Economic Perspectives* 12, no. 1 (1998), 137-156.

33. Lorraine Tulman and Jacqueline Fawcett, "Maternal employment following childbirth," *Research in Nursing and health* 13: 181-188, 1990.

34. Roseanne Clark, Janet Shibley, Marilyn Essex, and Marjorie Klein, "Length of maternity leave and quality of mother-infant interactions," *Child Development* 68 (2):364-383, 1997.

35. Jeanne Brooks-Gunn, Wen-Jui Han, and Jane Waldfogel. "Maternal employment and child cognitive outcomes in the first three years of life: The NICHD study of early child care." *Child Development* 73 (4): 1052-73, 2002.
36. Charles L. Baum, "Does early maternal employment harm child development? Analysis of the potential benefits of leave taking." *Journal of Labor Economics* 21(2):409-448, 2003.
37. Christopher Ruhm, "Parental leave and child health," *Journal of Health Economics* (19(6): 931-960, 2000.
38. See [here](#).
39. Albelda and Clayton-Matthews, pp. v-vi.
40. *Ibid.*, p. 16.
41. Kris Maher, "Is family leave act too soft or too tough?" *Wall Street Journal Abstracts*, November 21, 2007, D1.
42. Judy Greenwald, "Appeals court rules twice for employers with 'honest suspicion' of workers on leave," *Business Insurance*, September 1, 2008, p. 28.
43. *Ibid.*
44. Judy Greenwald, "Firms use private eyes to track FMLA abuse; Experts urge caution as privacy concerns rise," *Business Insurance*, September 1, 2008.
45. *Ibid.*
46. *Ibid.*
47. *Ibid.*
48. Susanna Schrobsdorff, "Family Leave under fire?" *Newsweek*, March 26, 2007, p. 8.
49. Hsin-Yin Lee, "Poll finds most seek reform of family,

medical leave law," *The Washington Times*, March 9, 2008, p. A04.

50. *Ibid.*

51. *Ibid.*

52. Lily Garcia, "When your supervisor wants a doctor's note every time," *The Washington Post*, December 28, 2008, p. K01.

53. Mark Schoeff Jr., "Opponents of FMLA changes seek redress," *Workforce Management*, December 15, 2008.

54. *Ibid.*

55. Lily Garcia, "When your supervisor wants a doctor's note every time," *Washington Post*, December 28, 2008.

56. *Ibid.*

57. Sue Shellenbarger, "Family time: Lawmakers push to expand paid leave," *Wall Street Journal Abstracts*, November 19, 2008, p. D1.

58. *Ibid.*

59. See [here](#).

60. Katharine [Mieszkowski](#), June 5, 2009.

61. *American Chronicle*, "[Stark introduces Paid Family Leave legislation](#)," March 28, 2009.

62. Eve Tahminciogler, "Paid Family Leave becomes hot workplace issue," *msnbc.com.contributer*, June 3, 2008.

63. [National Partnership for Women and Families](#).

64. Chai R. Feldblum, "Policy challenges and opportunities for workplace flexibility," in Crouter and Booth, p. 256.

65. Heather Boushey, "[Helping breadwinners when it can't](#)



[wait](#)," Center for American Progress, June 8, 2009.

66. *Ibid.*

67. *Ibid.*

68. Ellen Bravo, "Letter to the Editor," *New York Times*, February 13, 2009.